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In re Application of	:	DECISION ON
Huijbers et al	:	
US Application No. 10/469,911 and 10/648,734	:	RENEWED PETITION
Filing Date: 25 August 2003	:	UNDER 37 CFR 1.137(b)
Attorney's Docket No.: 88405	:	AND MERGING THE
For: HYDRAULICALLY ACTUATED HOLDER	:	US APPLICATION FILES

This is in response to applicant's "REPLY TO DECISION ON PETITION UNDER 37 CFR 1.137(b)" faxed 19 December 2003 which is being treated as renewed petition under 37 CFR 1.137(b) and to the communication filed on 28 October 2003, requesting that the copy of the application papers submitted therewith be treated as being received in the United States Patent and Trademark Office (USPTO) on 25 August 2003. No petition fee is required.

BACKGROUND

In a decision from this Office on 30 September 2003, the 10 September 2003 communication forwarding copies of application papers purportedly filed on 25 August 2003 was not treated on the merits because it signed by "Anne M McCloskey" who was apparently not a practitioner registered to practice before the USPTO. The decision also dismissed the petition under 37 CFR 1.137(b) to revive the international application no.: PCT/US00/04714 because the petition was not accompanied by the "required reply" as specified therein.

On 28 October 2003 applicants filed a petition that states that the following is a copy of the Post Office Express Mail receipt for documents mailed on August 25, 2003. The submitted petition includes, inter alia: 1) A copy of the customer receipt of "Express Mail" Label No. EE353633612US, 2) Transmittal Letter, 3) Application papers, 4) Combined Declaration and Power of Attorney, and 5) Postcard itemizing the above the documents.

On 19 December 2003 applicants filed a petition "REPLY TO DECISION ON PETITION UNDER 37 CFR 1.137(b)" which contain, inter alia, a copy of the petition to revive the current application.

DISCUSSION

1. 28 October 2003:

A review of USPTO record reveals that applicant's originally filed papers (application) were received in the USPTO on 25 August 2003 and was assigned application number: 10/648,734.

Consequently, the 28 October 2003 petition is **DISMISSED** as **Moot**. The application papers contained in the 10/469,911 file wrapper will be placed in application 10/648,734 and the 10/469,911 application will be inactivated. Applicant are advised to use application no. 10/648,734 in all future communications.

2. RENEWED PETITION UNDER 1.137(b):

Application no. 10/648,734 was properly treated as a filing under 35 U.S.C. 111(a) since it was submitted with a "Utility Patent Application Transmittal" letter (Form PTO/SB/05). Applicant has filed a petition to revive international application PCT/US02/04714, presumably for purposes of co-pendency with application 10/648,754.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

The petition is not deemed to satisfy the requirements under 37 CFR 1.137(b).

Applicants have provided: (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 37 CFR 137(b)(3). In this application, no terminal disclaimer is required. However, Petitioner has not met requirement (1) because the reply is not the proper "required reply."

While the filing of a continuing application may be accepted as satisfying the "required reply" requirement, the application (See MPEP § 711.03(c)) does not claim benefit under 35 USC 120 to the international application in accordance with 37 CFR 1.78.

CONCLUSION

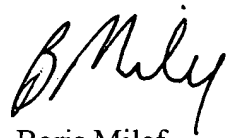
For reasons above, the petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

The correct application no.: is 10/648,734 and all future correspondence dealing with the above application should refer to such application number. The papers filed on 28 October 2003 and 19 December 2003 have been placed in Application No.: 10/648,734.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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